

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JUANA HERNANDEZ, AS)
ADMINISTRATRIX OF THE)
ESTATE OF DANNY NICACIO)
and ARMANDO MAISONET,)

Plaintiffs,)

v.)

CIVIL ACTION NO. 05-40141-FDS

SCOTTSDALE INSURANCE)
COMPANY and UTICA)
MUTUAL INSURANCE)
COMPANY,)

Defendants.)

**DEFENDANTS' MOTION FOR LEAVE TO SUPPLEMENT THEIR REPLY IN
SUPPORT OF THEIR JOINT MOTION TO DISMISS PURSUANT TO FED. R. CIV. P.
12 (b)(6), OR TO STAY ACTION IF NOT DISMISSED IN ITS ENTIRETY**

The Defendants, Scottsdale Insurance Company ("Scottsdale") and Utica Mutual Insurance Company ("Utica"), hereby request leave to supplement their Reply in Support of Their Joint Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6), or to Stay Action If Not Dismissed In Its Entirety ("Reply"). A supplement is warranted because there has been a recent development in the Underlying Actions pending in the Worcester Superior Court which this Court should be made aware of. In support of their supplement, the Defendants state as follows:

In Section VI of the Defendants' Reply, the Defendants address the fact that Scottsdale and Utica's insured, Saielo, Inc. has filed a motion to dismiss in the Underlying Actions. Upon motion by the defendants in that case, the Worcester Superior Court has ordered that the

Underlying Actions be stayed until the motion to dismiss in the Underlying Actions is decided.

A copy of the Worcester Superior Court's order in the Hernandez action is attached hereto¹.

WHEREFORE, Defendants hereby respectfully request that the Court consider this supplement to their Reply.

Respectfully submitted,

Scottsdale Insurance Company,
By Its Attorneys,

Utica Mutual Insurance Company,
By Its Attorney,

/s/ Caryn L. Daum

John W. Steinmetz (BBO #568108)
Caryn L. Daum (BBO #647001)
Robinson & Cole LLP
One Boston Place
Boston, MA 02108
(617) 557-5900

/s/ James T. Scamby

James T. Scamby (BBO #629144)
Tucker, Heifetz & Saltzman, LLP
Three School Street
Boston, MA 02108
(617) 557-9696

Dated: January 6, 2006

¹ The Worcester Superior Court has also stayed the Maisonet action; however, the court did not issue a separate order for that case, so the Defendants are unable to attach a copy to this supplement.

CERTIFICATE OF SERVICE

I, Caryn L. Daum, hereby certify that a true and accurate copy of the foregoing document was served by first-class mail, postage prepaid, on this 6th day of January, 2006, upon:

Héctor E. Piñeiro, Esq.
Law Office of Héctor E. Piñeiro
807 Main Street
Worcester, MA 01610

/s/ Caryn L. Daum
Caryn L. Daum

Civil Docket **WOCV2002-01747**

RE: Hernandez Administratrix et al v Kahr Inc et al

TO: John W Steinmetz, Esquire
Robinson & Cole LLP
One Boston Place
Boston, MA 02108

CLERK'S NOTICE

This is to notify you that in the above referenced case the Court's action on **12/07/2005**:

RE: Emergency Motion to Stay all Proceedings and Request for Hearing

is as follows:

MOTION (P#72) The motion to stay after hearing and after notice all parties, is ALL'D, except that the inspection of the premises in question may be conducted as scheduled. If the motion to dismiss which is in progress and has not yet been filed under 9a is ALL'D, that will be dispositive of this case. If the Motion to Dismiss is DENIED, then the time standards shall be amended to include and reflect the full period of the stay ordered by this Court and any voluntary stay period previously agreed to by all sides. (John S. McCann, Justice (RAJ)). Notices mailed 12/8/2005

Dated at Worcester, Massachusetts this 8th day of December, 2005.

Francis A. Ford,
Clerk of the Courts

BY:

Joanne C. Herring
Assistant Clerk

Telephone: 508-770-1899, Ext. 126 or Ext. 105 (Session Clerk)

Copies mailed 12/08/2005